**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-35** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Demolishing an existing building and replacing the building.** |
| **Keywords:** |  |
| **Approval Date:** | **02/19/1999** |

**Body:**

Office of Policy & Research

February 19, 1999

XXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Dear XXXXXXXXX:

The purpose of this letter is to respond to your faxed letter dated February 1, 1999.

Kansas law imposes tax on "the gross receipts received for the service of installing or applying tangible personal property. . ., except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building . . ." K.S.A. 79-3603(p).

"Original construction" means "the first or initial construction of a new building. . ." and includes "the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;" K.S.A 79-3603(p)(1).

Per Kansas Administrative Regulation 92-19-66b subsection (d) states, "The service of installing or applying tangible personal property in connection with the original construction, which is the first or initial construction of a new building or facility, shall not be subject to sales tax. The erection of a building or facility on a site previously occupied by a building or facility that has been demolished, razed, or dismantled shall be considered to be original construction if the building or facility is totally new, whether or not the old foundation was also demolished."

In your letter you stated that your company will be demolishing an existing building leaving the structural steel in place. Everything else will be replaced including but limited to concrete, walls and roof. You asked is this will be classified as original construction?

Per the regulation, if an existing building is razed to the foundation and another building is constructed, the services to construct would be in connection with the original construction of a building. In the scenario per your letter, albeit substantially all of the building is to be razed the structural steel is to remain. It is the opinion of the Kansas Department of Revenue that this project does not qualify as original construct of a building. Kansas retailers’ sales tax applies to the gross receipts from this project.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 03/02/1999 Date Modified: 10/11/2001**